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Mayor

City of Albuquerque

Albuquerque Police Department



Harold J. Medina
Chief of Police

June 4th, 2021

Interoffice Memorandum

To: CPOA Board
From: Harold J. Medina, Chief of Police
Subject: Non concurrence CPC – 255-20

I have reviewed the above listed case and concur in part and do not concur in part with the findings of the CPOA investigation. The sustained charges in this case are predicated on an alleged use of force. If this case was believed to contain a use of force, it should be sent to IAFD for a thorough evaluation and determination. The factors of minimal, necessary, reasonable and proportionate force can then be evaluated by investigators who are trained in and specialize in use of force. This would follow the same practice as criminal allegations made to the CPOA being referred for a criminal investigation to the appropriate unit.

In determining if a use of force occurred one must look at the policy in its entirety and not in part. The policy section below was cited by the CPOA investigation as the determining factor that this was a use of force;

Level 1 Use of Force: Force that is likely to cause only transitory pain, disorientation, and/or discomfort during its application as a means of gaining compliance.

1. *This includes techniques that are not reasonably expected to cause injury, do not result in an actual injury, and are not likely to result in a complaint of injury (i.e., pain compliance techniques and resisted handcuffing).*

There are two more subsections to this policy which were omitted;

b. Shows of force, including: pointing a firearm, beanbag shotgun, 40 millimeter impact launcher, OC spray, or ECW at an individual, or using an ECW to "paint" an individual with the laser sight or utilizing a warning arc. A show of force is reportable as a Level 1 use of force.

c. Level 1 use of force does not include interaction meant to guide, assist, or control an individual who is offering minimal resistance. (Emphasis added)

Moreover one must examine what is not a use of force. In the policy cited below, that is defined;

O. Low-Level Control Tactics

1. *Physical interactions meant to guide and/or control an individual that do not constitute a reportable use of force. Low-level control tactics include, but are not limited to:*

a. Escort techniques, touching, use of control holds, or handcuffing an individual with no or minimal resistance (e.g., tensing of arm muscles or turning or pulling away that does not escalate to a reportable use of force) which does not cause pain and is not reasonably likely to cause pain or injury; and

b. Using hands or equipment to stop, push back, separate, or escort a person in a manner that does not cause pain, and is not reasonably likely to cause any pain or injury.

The video depicts the complainant having slipped one hand out of her handcuffs. The complainant states that they "fell off". In any event the subject officers proceed to re handcuff the complainant. The complainant is moving around and screaming the entire time and at one point complains about the handcuffs hurting her. The handcuffs are being adjusted when the complainant attempts to turn toward the officer on her left side. The officer on her right side grabs her upper bicep and pulls her back facing forward. This occurs a second time and the officer tells the complainant to stop turning around. It is the grabbing of the complainant's bicep that the investigation determined to be a use of force. The complainant never mentioned pain from the officer holding her in the video or in her complaint.

When the complainant is released back into the cell, it is apparent on video that the handcuffs move freely and are around the distal portion of the wrist. Moreover the handcuff on her left wrist is over her shirt cuff.

In examining if a use of force occurred I looked at policy, circumstance and intent. The policy states;

Escort techniques, touching, use of control holds, or handcuffing an individual with no or minimal resistance (e.g., tensing of arm muscles or turning or pulling away that does not escalate to a reportable use of force) which does not cause pain and is not reasonably likely to cause pain or injury

The complainant was clearly turning and pulling away. The question is whether the officers' actions caused pain or reasonably likely to cause pain. Pulling on someone's upper arm and holding it in the manner depicted is not reasonably likely to cause pain or injury. It is a quasi-escort hold which is also defined to not be a use of force. I then examined the intent associated with the action. The officers were trying to adjust the handcuffs and the complainant kept turning. The officer's statement affirms that his apparent intent was to keep the complainant from turning so the handcuffs could be applied. I then looked at the resistance the complainant was offering. To determine this I looked at the policy stated above which says in part, "*handcuffing an individual with no or minimal resistance (e.g., tensing of arm muscles or turning or pulling away that does not escalate to a reportable use of force)*". The actions of the complainant are clearly within this definition.

Since the handcuffs do not appear improperly applied on video, this coincides with the officer's statement that they were properly applied.

While the complainant's screaming is quite dramatic, the case in its entirety must be evaluated. For the reasons stated above, the preponderance of evidence indicates that this was not a use of force. The mechanisms employed meet the definition of low level control tactics.